Supreme Court, U.S.
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No. 93-1679

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1993

STEVEN ROBERT BRITENBACH

Petitioner

-vs-

UNITED STATES OF AMERICA

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITIONER'S SUPPLEMENTAL MEMORANDUM RE PETITION FOR WRIT OF CERTIORARI

NICHOLAS DePENTO
Attorney at Law
444 West C Street
Suite 120
San Diego, CA 92101
(619) 236-1151

Attorney for Petitioner

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After the filing of briefs herein regarding the issuance of a writ of certiorari, counsel for petitioner was apprised of the existence of a new case,

United States v. Bellazarius, 24 F.3d 698 (5th Cir. 1994), issued on June 17, 1994, which directly bears upon the question. Pursuant to instructions of the Clerk of the Court, counsel offers the instant Supplemental Memorandum as the vehicle for advising the Court of this opinion.

Bellazarius is significant for two reasons. First, Bellazarius adopts the holding in United States v. Price, 990 F.2d 1367 (D.C. Cir. 1993), that a conspiracy offense may not be utilized as a trigger for the career offender guideline, at least insofar as the Sentencing Commission purports to rely upon 28 U.S.C. Section 944(h) as the authority for including conspiracy offenses. Bellazarius, supra, at 701. Secondly, Bellazarius directly addresses one of the arguments raised by respondent, to wit,

that a proposed amendment to the guidelines, shifting authority for inclusion of inchoate offenses to 28 U.S.C. Section 944(a), renders it unnecessary for the Court to address the problem. Bellazarius holds that the proposed amendment is prospective only, and does not validate sentences which were imposed under the prior erroneous guideline authority. Bellazarius, supra, at 702.

Counsel has further been advised that in a June 27, 1994, decision by the Eighth Circuit, United States v. Mendoza-Figueroa, (1994 WL 299912), that court likewise adopted the position of Price, supra, holding that a conspiracy offense does not lawfully trigger the career offender guideline.

Counsel for petitioner respectfully submits that the Bellazarius and Mendoza-

Figueroa opinions are analyses appropriate and relevant to the decision of the Court as to the issuance of a writ of certiorari.

Date: 8-10-94 Respectfully submitted

NICHOLAS DePENTO
Attorney for Petitioner